

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

ROBERT BAILEY,

Plaintiff,

vs.

CITY OF BELLEVUE, NEBRASKA, a
political subdivision of the State of Nebraska,

Defendant.

4:18CV3132

ORDER

The undersigned magistrate judge has been advised that counsel have informally resolved the discovery dispute between Plaintiff and Sarpy County that is the subject of Plaintiff's Motion to Compel ([Filing No. 102](#)) and Sarpy County's Motion for Leave to File Objections Out of Time ([Filing No. 112](#)). Accordingly, those motions are denied as moot as to Sarpy County.

Plaintiff's Motion to Compel ([Filing No. 102](#)) also seeks to compel Chief Mark Elbert's compliance with a subpoena duces tecum served upon him on June 1, 2020. After receiving no response to the subpoena, on June 25, 2020, Plaintiff's counsel contacted the attorney representing Chief Elbert in two other lawsuits regarding the outstanding subpoena in this case, but did not receive a response.¹ On July 1, 2020, Plaintiff filed the instant motion to compel. Plaintiff's certificates of service and supporting affidavit demonstrate that Plaintiff served the subpoena and the instant motion on both Chief Elbert personally and upon an attorney representing Chief Elbert in other matters. To date, Chief Elbert has not responded to the subpoena nor responded to the motion to compel. The Court previously granted Plaintiff leave to serve the subpoena on Chief Elbert after concluding that, at least on the record before the Court at the time, Plaintiff's subpoena generally sought relevant information. ([Filing No. 89](#)). Chief Elbert did not respond to or comply with the subpoena, respond to this motion to compel, or otherwise indicate resistance to the subpoena. Accordingly, the Court will grant the motion to compel as to Chief Elbert. Upon consideration,

¹ The record does not reflect that this attorney is actually representing Chief Elbert in this matter; rather, counsel for Plaintiff contacted that attorney in an abundance of caution.

IT IS ORDERED:

1. Plaintiff's Motion to Compel ([Filing No. 102](#)) is granted as to Chief Mark Elbert. Chief Elbert shall comply with the subpoena duces tecum served upon him on or before **September 14, 2020**. The Clerk of Court shall mail a copy of this Order to:

Mark Elbert
1500 Wall Street
Bellevue, NE 68005

and

Theodore Boecker, Jr.
Boecker Law, PC
11225 Davenport St., Suite 100
Omaha, NE 68154

2. Plaintiff's Motion to Compel ([Filing No. 102](#)) as to Sarpy County, and Sarpy County's Motion for Leave to File Objections Out of Time ([Filing No. 112](#)) are denied as moot given the representation that Plaintiff and Sarpy County have resolved the discovery disputes raised in those motions.

Dated this 20th day of August, 2020.

BY THE COURT:

s/Michael D. Nelson
United States Magistrate Judge